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FILE NO.

35164

March 3, 2004

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VIA FED EX

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**RE: STB Docket No. AB-55 (Sub-No. 568X)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania**

Dear Mr. Williams:

We represent Petitioners Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox and New Franklin Properties, LLC.

Enclosed herewith please find an original and 11 copies of the Petitioners' Motion to Strike the Reply of CSX Transportation, Inc.

Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

If you need anything further from us to complete the filing of the Motion, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

BECKLEY & MADDEN

Vernon A. Williams, Secretary
March 3, 2004
Page 2

Very truly yours,

BECKLEY & MADDEN

By: 

Charles O. Beckley, II

cc: Natalie S. Rosenberg, Esquire (via Fed Ex)
Louis E. Gitomer, Esquire (via Fed Ex)
Jonathan C. Gold, Esquire (via Fed Ex)
Martha B. Walker, Esquire (via Fed Ex)
Thomas J. Finucane, Esquire (via Fed Ex)
Mr. Frederick Armstrong Fox

210228

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RECEIVED
MAR 4 2004

DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

ENTERED
Office of Proceedings
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**PETITIONERS FREDERICK A. FOX, KAYE A. FOX, FREDERICK
ARMSTRONG FOX AND NEW FRANKLIN PROPERTIES, LLC'S,
MOTION TO STRIKE THE REPLY OF CSX TRANSPORTATION, INC.**

DATED: March 3, 2004

ENTERED
Office of Proceedings
MAR 4 2004
Part of
Public Record

Thomas A. Beckley, Esquire
Charles O. Beckley, II, Esquire

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
Harrisburg, PA 17108-1998
(717) 233-7691

Attorneys for Petitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

A
MAR 4 2004
RECEIVED

DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

**PETITIONERS FREDERICK A. FOX, KAYE A. FOX, FREDERICK
ARMSTRONG FOX AND NEW FRANKLIN PROPERTIES, LLC'S,
MOTION TO STRIKE THE REPLY OF CSX TRANSPORTATION, INC.**

AND NOW come the Petitioners, Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox ("the Foxes") and New Franklin Properties, LLC ("NFP"), who, by and through their attorneys, Thomas A. Beckley, Esquire, Charles O. Beckley, II, Esquire, and Beckley & Madden, of Counsel, file this Motion to Strike the Reply of CSX Transportation, Inc. ("CSXT"), stating :

1. On August 15, 2003, the Foxes filed a petition to amend their Offer of Financial Assistance to include Segment 1 of CSXT's rail line in the Borough of Chambersburg, Franklin County, Pennsylvania, or, alternatively, for permission to file a new OFA, *nunc pro tunc*.¹

¹ Contrary to CSXT's suggestion, there is not a group of "Offerors" and a group of "Second Offerors" in this proceeding. As noted previously to the Board, in March, 2002, Karla M. Fox commenced an action for divorce against Frederick Armstrong Fox in the Court of Common Pleas of Franklin County, Pennsylvania. She has not participated further in this proceeding.

2. CSXT did not oppose the Foxes' petition.

3. On September 10, 2003, upon learning that the Borough of Chambersburg hoped to render the Foxes' petition moot by making an offer to purchase Segment 1 directly from CSXT, the Foxes filed a motion for stay, asking the Board to enter an order precluding CSXT from selling or abandoning Segment 1 while the Foxes' petition remained pending.

4. CSXT did not oppose the Foxes' motion.

5. On September 22, 2003, New Franklin Properties, the new owner of the former Chambersburg Engineering Company property (the property served by Segment 1), filed a petition to intervene in this matter.

6. CSXT did not oppose NFP's petition.

7. On January 20, 2004, the Board served a decision which noted that CSXT did not object to the Foxes' petition, but indicated that the Board believed that it needed additional evidence concerning the Foxes' and the Borough's respective plans for Segment 1:

Now, some 4 years after the allotted time for filing OFA's, the status of Segment 1 has changed yet again, causing the Foxes to seek, for the first time, to submit an OFA for that line segment. ***CSXT does not object, but the Borough does***, citing the statutory time frame and the Borough's own plans for Segment 1. Given the continually changing status of the property, and the sparse record that has been presented on the issue, the Board does not have an adequate basis upon which to determine whether permitting a late-filed OFA for Segment 1 here would be consistent with Congress' intent. ***The current record provides only terse statements,***

without supporting evidence, of the parties' respective plans for this segment. Accordingly, the parties are directed to provide additional evidence about their respective plans for Segment 1 and how they intend to pursue those plans if afforded the opportunity, so that the Board will have a sufficient record upon which to assess the public interest in this situation.

Decision of the STB Served on January 20, 2004, p. 4 (emphasis added).

8. On February 17, 2004, in response to the Board's January 20, 2004, Decision, the Foxes and NFP filed with the Board the Affidavit of Frederick Armstrong Fox; the Borough filed with the Board the Affidavit of Eric Oyer.²

9. CSXT filed nothing.

10. On February 27, 2004, the Foxes and NFP filed a reply to the affidavit submitted by Eric Oyer and the Borough filed a reply to the affidavit submitted by Frederick Armstrong Fox.

11. CSXT filed with the Board on February 27, 2004, a document which it styled as the "Reply of CSX Transportation, Inc." In truth, however, the document is not a reply at all, in that it is neither responsive to the averments contained in the affidavits submitted by the Foxes, NFP and the Borough, nor is it responsive to the Board's request, set forth in its January 20, 2004, Decision, for factual information concerning the Foxes' and the Borough's respective plans for Segment 1 of CSXT's rail line.

² The Board in its January 20, 2004, Decision originally directed the Foxes and the Borough to file their additional evidentiary material on or before February 9, 2004. The Foxes' requested that this period be extended by one week, and the Board granted that request. Neither the Borough nor CSXT objected to the Foxes' request.

12. Rather, CSXT uses its “reply” to express its newfound opposition to the Foxes’ request to purchase Segment 1 through the OFA process. If CSXT wished to take this position, then it should have filed its “reply” in response to the original petition filed by the Foxes more than six months ago, on August 15, 2003. CSXT did not do so, and the “reply” which it filed on February 27, 2004, is therefore untimely, and should be stricken. *See* 49 C.F.R. §1104.13. Alternatively, Petitioners request that this motion be treated as a surreply to CSXT’s “reply.”

13. The Foxes can only speculate why CSXT has changed its position. Many of the arguments CSXT makes, however, are either inconsistent with its previous statements, or unsupported by the record in this proceeding.

14. First, the Foxes did not cause the delays in this matter about which CSXT now complains. **CSXT has asked the Board on 11 separate occasions, including as recently as December 10, 2003, to extend both the time limit in which to consummate the abandonment and the NITU negotiating period.** The Board has granted all 11 of CSXT’s requests, and the deadline has now been extended until July 30, 2004, which should allow more than enough time for the Board to decide this matter and for the Foxes to complete the purchase of both Segments 1 and 2 through the OFA process.³

15. Second, despite CSXT’s insinuation to the contrary, the Foxes are not responsible for the delay in completing the sale of Segment 2. On July 18, 2001, the Foxes forwarded to CSXT a nonrefundable deposit for Segment 2 in the amount of \$13,500.00. (A copy of the transmittal

³ Moreover, CSXT asserts in footnote 1 of its “reply” that “[t]he parties are negotiating to extend the expiration date of the PADOT Agreement to October 18, 2004.” Given this October date, it is certainly foreseeable that CSXT may ask the Board for a twelfth extension of time.

letter for the deposit is attached hereto as Exhibit A.) On October 31, 2001, CSXT forwarded to the Foxes' Counsel a draft Purchase and Sale Agreement for Segment 2. (A copy of the transmittal letter from Nancy Reynolds, of CSXT, to the Foxes' Counsel is attached hereto as Exhibit B.) On November 12, 2001, the Foxes' Counsel forwarded written comments on the proposed Purchase and Sale Agreement to Ms. Reynolds. (A copy of the Foxes' Counsel's November 12, 2001, letter to Ms. Reynolds is attached hereto as Exhibit C.) On November 28, 2001, Ms. Reynolds telephoned the Foxes' Counsel and said that she was seeking answers to the Foxes' questions concerning the draft agreement. The Foxes' Counsel confirmed this telephone conversation in a letter to Ms. Reynolds dated November 29, 2001, a copy of which is attached hereto as Exhibit D. On June 17, **2003**, Natalie S. Rosenberg, Esquire, CSXT's Counsel, sent a letter to the Foxes' Counsel in which she stated that "[i]t is my understanding that you earlier provided some comments on a proposed Purchase and Sale Agreement. CSXT will work to progress it to the next step so that it can be signed in the near future." (A copy of Ms. Rosenberg's June 17, 2003, letter is attached hereto as Exhibit E.)

16. The Foxes are still awaiting CSXT's responses to the comments on the draft Purchase and Sale Agreement for Segment 2 that their Counsel forwarded to CSXT on November 12, 2001.

17. Third, the Foxes did not wait for a year after NFP purchased the former Chambersburg Engineering Company property to try to purchase Segment 1 from CSXT. By letter dated July 19, 2001 (i.e. **before** NFP purchased the CECO facility) the Foxes' offered to purchase Segment 1 from CSXT for the price of \$23,534.00, which is what CSXT had said

Segment 1 was worth in a letter to the Foxes' Counsel dated January 27, 1999.⁴ (A copy of the Foxes' Counsel's July 19, 2001, letter to Natalie S. Rosenberg, Esquire, is attached hereto as Exhibit F.) The Foxes made this offer because the plans for Segment 1, as articulated by CSXT, changed repeatedly. After NFP acquired the former CECO property (the land served by Segment 1), the Foxes continued their efforts to purchase Segment 1 from CSXT. Finally, on June 17, 2003, Natalie S. Rosenberg, Esquire, CSXT's Counsel, sent the Foxes' Counsel a letter stating that:

In confirming our telephone conversation in response to your letter of May 28, 2003, CSX Transportation, Inc. ("CSXT") intends to sell the portion of the relevant line between 4th Street and Main Street to the Borough of Chambersburg. ***In the event that the Foxes are able to procure permission from the STB to extend the limits of the earlier filed OFA to include the portion of the line between 4th Street and Main Street, it is likely that CSXT would then be required to sell the area between 4th Street and Main Street to the Foxes.***

(A copy of Ms. Rosenberg's June 17, 2003, letter to the Foxes' Counsel is attached hereto as Exhibit E.) (emphasis added).

18. The Foxes filed their petition to amend their OFA on August 15, 2003, shortly after receiving Ms Rosenberg's June 17, 2003, letter.

19. Fourth, on page 7 of its "reply," CSXT says that it "understands that if Segment 1 is acquired before CSXT consummates the abandonment and outside the interim trail use/rail

⁴ In this regard, the Foxes note that, on page 9 of its "reply," CSXT asserts that it "has absorbed the opportunity costs of holding non-productive property valued at over \$250,000.00 for more than five years." In his letter dated January 27, 1999, to the Foxes' Counsel, however, Charles M. Rosenberger, Esquire, CSXT's former Counsel, indicated that the total combined value of Segments 1 and 2 of CSXT's rail line was \$78,106.00, that the value of Segment 2 was \$54,272.00, and that the value of Segment 1 was \$23,834.00. CSXT agreed to sell Segment 2 to the Foxes for the purchase price of \$54,272.00. (A copy of Mr. Rosenberger's January 27, 1999, letter to the Foxes' Counsel is attached hereto as Exhibit G.)

banking process, then the buyer will be acquiring an active line of railroad and will obtain the rights and obligations that go along with acquiring the physical assets.” CSXT has previously represented to the Board, however, that it intends to convert Segment 1 to industrial sidetrack **post abandonment**, and then sell it to a public entity:

Chambersburg Engineering will not lose rail service as a result of this abandonment. **Post abandonment**, CSXT will reclassify the trackage between 4th Street and Main Street in Chambersburg as industrial sidetrack and this trackage will be sold to a public entity for continued rail operations.

CSXT’s Petition for Exemption, p. 3 (emphasis added).

20. If CSXT sells Segment 1 to a public entity post abandonment, as CSXT has said it intends to do, then Segment 1 will lie outside of the Board’s jurisdiction, and the public entity will have no duty to maintain Segment 1 or provide rail service. *See* 49 U.S.C. §10906; 49 C.F.R. §1150.22. In this regard, as noted previously, CSXT has said in footnote 1 to its “reply” that it is “negotiating to extend the expiration date of the PADOT Agreement to October 18, 2004,” a date well beyond the current July 30, 2004, deadline for CSXT to exercise abandonment authority.

21. Fifth, although CSXT indicates at page 9 of its “reply” that it “is willing to sell Segment 1 for appraised value outside the OFA process, consistent with its contractual obligations,” as a matter of law, any private contractual obligation that CSXT may or may not have cannot trump or displace the OFA process.⁵ *See* 49 U.S.C. §10904; 49 C.F.R. §1152.27.

⁵ For the reasons stated at pp. 8-12 of NFP’s petition to intervene in this matter, which are incorporated herein by reference as though set forth in full, the Foxes and NFP believe that CSXT has no contractual obligation to sell Segment 1 to either the Borough of Chambersburg or any other public entity.

22. Sixth, while CSXT states for the first time in its “reply” (p. 8) that “it does not believe that it is appropriate to sell Segment 1 through the OFA process,” CSXT has not identified any prejudice that it will suffer if the Board grants the Foxes’ request to amend their OFA. CSXT complains only about potential delay. Again, however, **CSXT has asked for and received 11 separate extensions of time to consummate its abandonment.** CSXT should not now be heard to complain about delay, especially since the Foxes stand ready to complete the acquisition of both Segments 1 and 2 before July 30, 2004, the current abandonment deadline.

23. Finally, by suggesting that the Foxes “assumed a substantial risk when they filed an OFA only for Segment 2” in March, 1999 (“reply,” p. 8), CSXT in effect criticizes the Foxes for not being able to predict the future. Admittedly, the Foxes are not clairvoyant. (For example, the Foxes did not predict that CSXT would reverse its position and make an untimely attempt to oppose the Foxes’ petition.) CSXT does not and cannot dispute, however, that during the years that passed while CSXT sought extension after extension of its abandonment deadline, the circumstances surrounding Segment 1 changed dramatically. Chambersburg Engineering Company, which Segment 1 served, went out of business. NFP, the company owned by Frederick Armstrong Fox, acquired CECO’s property.

24. As outlined in the affidavit submitted by Frederick Armstrong Fox, the acquisition of the CECO facility significantly expanded the universe of opportunities available both to the Foxes and to their manufacturing businesses. As the Foxes have said to the Board, if they could have predicted in 1999 that, after being in business for more than 100 years, the Chambersburg Engineering Company would close its doors forever in 2002, which would in turn trigger a chain

of events that would allow NFP to purchase CECO's facility, then they certainly would have included Segment 1 in their original OFA. But the Foxes are not clairvoyant, and neither CSXT nor the Board should fault them because they did not possess such preternatural prescience.

25. The substantial change in circumstances upon which the Foxes and NFP base their respective petitions occurred during the period when CSXT repeatedly asked for, and received, extensions of time in which to exercise its abandonment authority. Neither the Foxes nor NFP prevented CSXT from consummating the abandonment of its line more quickly. As the Foxes stated in their petition, "in order to further the rail transportation policy articulated by Congress in 49 U.S.C. §10101, the regulatory framework applicable to offers of financial assistance should retain the flexibility to adapt to circumstances relating to the ownership and use of property served by a rail line which evolve during the pendency of an abandonment exemption proceeding." *Petition to Amend OFA*, p. 11. The Board explicitly recognized this need to retain the ability to adapt to changed conditions in its January 20, 2004, Decision:

In interpreting and administering the OFA provisions, including the time frame for submitting an OFA, the Board seeks to accommodate and harmonize Congress' dual objectives of preserving rail service where possible, while protecting the owning railroad from bearing the costs associated with unreasonable delay.

As the history of this case illustrates, there can be situations in which allowing a late-filed OFA may be consistent with both of Congress' objectives.

Decision of the STB Served on January 20, 2004, p. 4.

26. The OFA process exists to enable financially responsible potential shippers (like the Foxes) to retain access to the national rail network at their own expense. Like the Borough before it, CSXT has not articulated a single substantive reason why the owner of the property

served by Segment 1, and the owners of the only businesses served by Segments 1 or 2 who have expressed an interest in rail service, should not be permitted to acquire both Segment 1 and Segment 2 through the OFA process. CSXT has not offered a single substantive reason why the Board should not grant the relief that the Foxes have requested.

27. The Foxes do not know why CSXT has now decided to oppose the Foxes' petition. What the Foxes do know, however, is that it is very difficult to stay in business as a manufacturer in the United States today. Limited resources must be allocated carefully. Spiraling employee health care, fuel and raw material costs must be balanced against the constant downward pressure on product pricing brought to bear by foreign competition. The Foxes did not undertake their effort to acquire Segments 1 and 2 through the OFA process lightly. If they are successful, the acquisition of Segments 1 and 2 will in total cost several hundred thousand dollars, not including the money that they will spend in the coming years to maintain the line.

28. The Foxes undertook their effort to purchase Segment 1 through the OFA process when the circumstances relating to the ownership and use of the former Chambersburg Engineering Company property changed. They undertook this effort because they believe that the long term survival of their businesses depends upon their ability to ensure and control their access to rail service; to safeguard NFP's substantial investment in the CECO facility; and to maximize the pool of potential tenants for their Black Avenue properties. They have funded this effort with their own money, not with tax dollars. Their request to be afforded the opportunity to acquire Segment 1 through the OFA process is reasonable, it is consistent with the objectives which Congress sought to achieve through the OFA process, and it should be granted.

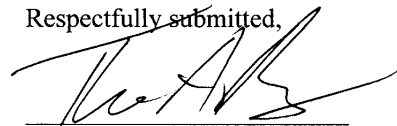
WHEREFORE, Petitioners, Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox and New Franklin Properties, LLC, respectfully request the Board to enter an order striking CSXT's untimely "reply," or, alternatively, accepting this motion as a surreply to CSXT's "reply." Petitioners continue respectfully to request the Board to: (a) enter an order allowing the Foxes to amend their OFA to include Segment 1; (b) reopen its Decision served on March 9, 1999, to permit the Foxes to file, *nunc pro tunc*, a new OFA that includes Segment 1; or (c) reopen its Decision served on March 9, 1999, to permit New Franklin Properties to file its own OFA for Segment 1 of CSXT's Line.

DATED: March 3, 2004

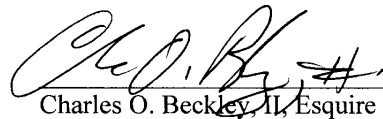
Of Counsel

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
Harrisburg, Pennsylvania 17108-1998
(717) 233-7691

Respectfully submitted,



Thomas A. Beckley, Esquire



Charles O. Beckley, II, Esquire

Attorneys for Petitioners

BECKLEY & MADDEN
ATTORNEYS AT LAW
CRANBERRY COURT
212 NORTH THIRD STREET
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FAX NO.
(717) 233-3740

FILE NO.
35164

July 18, 2001

Natalie S. Rosenberg, Esquire
CSX Transportation, Inc.
Law Department
500 Water Street
Jacksonville, FL 32202

VIA FAX & FED EX

RE: STB Docket No. AB-55 (Sub-No. 568)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania

Dear Natalie:

This will confirm that the Foxes are committed to purchasing that portion of CSXT's rail line that extends from Main Street in the Borough of Chambersburg to South Street, including the portion of the line that crosses over Main Street, but excluding the portion of the line that crosses over South Street. The Foxes are committed to purchasing this portion of the line and are aware that the status of the portion of the line that extends from Fourth Street to Main Street, through the Chambersburg Engineering Company property, has not yet been finally determined.

We understand that the terms of the purchase and sale will be in accordance with the Offer of Financial Assistance previously submitted by the Foxes to the Surface Transportation Board, i.e., the price will be \$54,572.00, which includes the right-of-way and all track, ties, facilities and equipment currently in place.

Enclosed herewith please find a check made payable to CSXT in the amount of \$13,500.00. This payment represents a non-refundable deposit. If the Foxes elect not to go to closing, then CSXT will retain the \$13,500.00 as liquidated damages, and will have no further remedy against the Foxes. At closing, the \$13,500.00 will be applied to the purchase price of the rail line. If, despite the Foxes' best efforts, the Surface Transportation Board refuses to allow the Foxes to reinstate their Offer of Financial Assistance, then CSXT will refund the \$13,500.00 deposit to the Foxes.

Exhibit A-1

BECKLEY & MADDEN

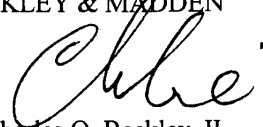
Natalie S. Rosenberg, Esq.
July 18, 2001
Page 2

As I mentioned to you on the telephone, the Foxes are still trying to decide which entity they wish to use to purchase the line. We expect to be able to indicate the name of the buyer to you shortly.

The Foxes appreciate CSXT's willingness to work with them in this matter. If you have questions concerning any aspect of the sale, or if I can provide you with any information, then please give me a call. I assume that the next step in this process will be for CSXT to forward to us a Purchase and Sale Agreement. Thank you for your courtesy and assistance.

Very truly yours,

BECKLEY & MADDEN

By: 
Charles O. Beckley, II

COBII/gs
Enclosure

cc: Mr. Frederick Armstrong Fox



TRANSPORTATION

Nancy B. Reynolds
Manager Line Transactions
Asset Management

35164
500 Water Street -J200
Jacksonville, FL 32202
Phone: (904) 359-1424
FAX: (904) 359-1111
E-Mail: Nancy_Reynolds@csx.com

October 31, 2001

Charles O. Beckley, II
Attorney at Law
Beckley & Madden
212 North Third Street - Cranberry Court
Post Office Box 11998
Harrisburg, PA 17108-1998

RE: Proposed Sale of CSX Transportation, Inc. ("CSXT") property
in Chambersburg, Franklin County, Pennsylvania
(CSXT File No. PA-204A) STB Docket AB-55 (Sub-No. 568X)

Dear Mr. Beckley:

Enclosed is a standard Purchase and Sale Agreement ("PSA"), in duplicate, outlining the terms and conditions of the proposed sale of the above-mentioned line segment between CSXT and Frederick Armstrong Fox.

If satisfactory, please arrange for execution of both originals of the PSA and return them to me for similar execution on behalf of CSXT. One fully executed original will be returned to you.

This PSA shall be of no effect unless it is signed and returned within thirty (30) days from the date hereof. This is not a commitment on the part of CSXT until this PSA is countersigned on behalf of CSXT and one original is returned to you consummated.

If you have any questions, please don't hesitate to call me at (904) 359-1424.

Very truly yours,

Attachments

Cc: Ms. Natalie S. Rosenberg, Counsel, CSXT, 500 Water Street-J150, Jacksonville, FL 32202
Ms. Joanna M. Griffith, Asset Management, CSXT, 500 Water Street-J200, Jacksonville, FL

Exhibit B

BECKLEY & MADDEN

ATTORNEYS AT LAW

CRANBERRY COURT

212 NORTH THIRD STREET

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FILE NO.

35164

November 12, 2001

Nancy B. Reynolds, Manager
Line Transactions
CSX Transportation, Inc.
500 Water Street - J200
Jacksonville, FL 32202

**RE: Proposed Sale of CSXT Property in
Chambersburg, Franklin County, Pennsylvania
(CSXT File No. PA-204A)
STB Docket No. AB-55 (Sub-No. 568)**

Dear Nancy:

Thank you for forwarding to me a proposed Purchase and Sale Agreement ("the Agreement"). We have reviewed the Agreement with Fred Fox, and have several questions and requests for revisions, which may be summarized as follows:

(a) Section 5.f. refers to a reservation to CSXT of an "Occupancy Easement," in, over, under and along those portions of the Line encumbered by existing occupancies of every type and nature We would appreciate it if you would tell us what CSXT considers an "occupancy" to be and whether the Line is encumbered by any existing occupancies. If it is not, then we request that the first paragraph of Section 5.f. be removed from the Agreement.

(b) Similarly, the second paragraph of Section 5.f. refers to a utility easement. We would appreciate it if you would explain to us why CSXT needs to retain a utility easement in and over the small portion of rail line being purchased by Mr. Fox. In our view, this proposed easement would be of little value to CSXT and is inconsistent with CSXT's existing easement rights (because it is not for a purpose incidental to railroad use). We request that the second paragraph of Section 5.f. be removed from the Agreement.

(c) We would appreciate it if you would provide us with copies of the agreements referred to in Section 7.a. of the Agreement and listed on Exhibit C.

Exhibit C-1

BECKLEY & MADDEN

Ms. Nancy B. Reynolds
November 12, 2001
Page 2

(d) We request that Section 7.c. be removed from the Agreement. Understandably, Fred Fox wants to be aware of and have reviewed all of the contracts, etc., that affect the Line before he enters into the Purchase Agreement.

(e) Section 18 prohibits Mr. Fox from assigning the Agreement. He would like to retain the ability to assign the Agreement to an entity which he owns or controls. We request that the Agreement be changed to provide that "Buyer shall not assign this Agreement without CSXT's prior written consent, which consent shall not be unreasonably withheld." Additionally, we would prefer that Section 18 of the Agreement identify with particularity which provisions of the Agreement will survive closing and delivery of the quitclaim deed. Please let me know which sections of the Agreement CSXT wants to survive closing. Finally, we request that the final sentence of Section 18 be removed from the Agreement. Mr. Fox wants to buy the Line free and clear of any mortgages, liens or deeds of trust.

(f) We would appreciate it if you would forward to us a draft of the quitclaim deed that CSXT intends to execute and deliver to Mr. Fox.

Thank you again for forwarding the draft Agreement to us. Please give me a call after you have had an opportunity to review this letter, so that we can discuss how to place the Agreement in final form. Thank you.

Very truly yours,

BECKLEY & MADDEN

By: 

Charles O. Beckley, II

COBII/gs

cc: Charles M. Rosenberger, Esquire
Natalie S. Rosenberg, Esquire
Mr. Frederick Armstrong Fox

BECKLEY & MADDEN

ATTORNEYS AT LAW

CRANBERRY COURT

212 NORTH THIRD STREET

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HARRISBURG, PENNSYLVANIA 17108-1998

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FAX NO.
(717) 233-3740

FILE NO.
35164

November 29, 2001

Nancy B. Reynolds, Manager
Line Transactions
CSX Transportation, Inc.
500 Water Street - J200
Jacksonville, FL 32202

**RE: Proposed Sale of CSXT Property in
Chambersburg, Franklin County, Pennsylvania
(CSXT File No. PA-204A)
STB Docket No. AB-55 (Sub-No. 568)**

Dear Nancy:

Thank you for your telephone call to let me know that you are seeking answers to the questions we asked about the draft Purchase and Sale Agreement.

After we spoke yesterday, I spoke with Fred Fox. Fred indicated to me that the contractor CSXT employed to remove the section of line being abandoned north of South Street has also removed approximately 93 feet of track south of South Street. This 93 feet is part of the portion of line that Guilford Properties LLC (owned by Fred Fox) intends to purchase.

I would appreciate it if you would add this matter to our list of questions, and then let me know what you discover. Thank you.

Very truly yours,

BECKLEY & MADDEN

By: 
Charles O. Beckley, II

COBII/gs

cc: Mr. Frederick Armstrong Fox

Exhibit D



NATALIE S. ROSENBERG
Senior Counsel

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Fax (904) 359-1248
Telephone (904) 359-3100

Writer's direct telephone line:
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June 17, 2003

Charles O. Beckley, II, Esquire
Beckley & Madden
Cranberry Court
212 North Third Street
Post Office Box 11998
Harrisburg, Pennsylvania 17108-1998

**Re: STB Docket No. AB-55 (Sub-No. 568X) -
CSX Transportation, Inc. - Abandonment Exemption in
Franklin County, Pennsylvania**

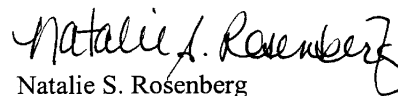
Dear Mr. Beckley:

In confirming our telephone conversation in response to your letter of May 28, 2003, CSX Transportation, Inc. ("CSXT") intends to sell the portion of the relevant line between 4th Street and Main Street to the Borough of Chambersburg. In the event that the Foxes are able to procure permission from the STB to extend the limits of the earlier filed OFA to include the portion of the line between 4th Street and Main Street, it is likely that CSXT would then be required to sell the area between 4th Street and Main Street to the Foxes.

CSXT would like to conclude this transaction as soon as possible. Please keep us posted of any developments, and CSXT will continue to progress the sale of the property between Main Street and South Street, which includes a highway-rail at-grade crossing that will become the responsibility of the Foxes. It is my understanding that you earlier provided some comments on a proposed Purchase and Sale Agreement. CSXT will work to progress it to the next step so that it can be signed in the near future.

Please feel free to give me a call if you have any questions.

Very truly yours,


Natalie S. Rosenberg

NSR/pkw

Exhibit E

BECKLEY & MADDEN

ATTORNEYS AT LAW

CRANBERRY COURT

212 NORTH THIRD STREET

POST OFFICE BOX 11998

HARRISBURG, PENNSYLVANIA 17108-1998

**AREA CODE 717
TELEPHONE 233-7891**

**FAX NO.
(717) 233-3740**

**FILE NO.
35164**

July 19, 2001

Natalie S. Rosenberg, Esquire
CSX Transportation, Inc.
Law Department
500 Water Street
Jacksonville, FL 32202

VIA FED EX

**RE: STB Docket No. AB-55 (Sub-No. 568)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania**

Dear Natalie:

This will confirm our telephone conversation of this morning.

As you know, the Foxes are seeking to purchase, through the OFA process, the portion of CSXT's rail line that extends from Main Street to South Street in the Borough of Chambersburg. As I indicated to you when we spoke, the Foxes have authorized me to offer to purchase as well the section of CSXT's line that extends from Fourth Street to Main Street.

Obviously, if the Foxes were to purchase this additional section of the line, it would assist them in maintaining rail service to their plant. We would prefer, however, to purchase this section of track privately, outside of the OFA process.

The Foxes are willing to pay \$23,534.00 for the additional section of line. We have based this figure on numbers provided to us by Charlie Rosenberger in a letter dated January 27, 1999. Charlie indicated that "CSXT has estimated the net liquidation value of its rail line between Fourth Street and South Street at \$78,106 and between Main Street and South Street at \$54,272." (For your convenience, I am enclosing herewith a copy of Charlie Rosenberger's January 27, 1999, letter.)

To arrive at the price for the piece between Fourth and Main, we simply subtracted the price for the section between Main and South from the total: \$78,106.00 - 54,572.00 =

Exhibit F-1

BECKLEY & MADDEN

Natalie S. Rosenberg, Esq.
July 19, 2001
Page 2

\$23,534.00. If this price needs to be adjusted due to the passage of time, then the Foxes will entertain any reasonable counteroffer.


The Foxes are prepared to close on the sale at CSXT's convenience, and would be willing to forward an additional deposit to CSXT as a sign of good faith.

Please let me know if we can provide you with any additional information concerning the Foxes' offer to purchase privately the section of line that extends from Fourth Street to Main Street. Thank you for your courtesy and assistance in this matter. We will look forward to receiving CSXT's response.

Very truly yours,

BECKLEY & MADDEN

By:


Charles O. Beckley, II

COBII/gs
Enclosure

cc: Mr. Frederick Armstrong Fox (w/encl.)



Charles M. Rosenberger
Senior Counsel

Admitted in Virginia
Not Admitted in Florida

35164
Law Department
500 Water Street
Speed Code J-150
Jacksonville, FL 32202
Fax (904) 359-7518
Telephone (904) 359-3100
Writer's direct telephone line:

904-359-1250

January 27, 1999

Charles O. Beckley, II
Beckley & Madden
Attorneys at Law
Cranberry Court
212 North Third Street
Harrisburg, PA 17108-1998

Re: STB Docket No. AB-55 (Sub-No. 568X)
CSX Transportation, Inc. - Abandonment
Exemption in Franklin County, Pennsylvania

Dear Mr. Beckley:

This refers to your letter of December 22, 1998 in the above-captioned proceeding requesting net liquidation values of CSXT's rail line between Fourth Street and South Street, or alternatively its rail line between Main Street and South Street in Chambersburg, Pennsylvania. I now have that information.

CSXT has estimated the net liquidation value of its rail line between Fourth Street and South Street at \$78,106 and between Main Street and South Street at \$54,572. Those figures break down as follows:

The net track salvage value of the rail and other track materials between Fourth and Main Streets is \$11,186.

The net track salvage value of the rail and other track materials between Main and South Streets is \$50,922.

The net track salvage value of the industrial track between Fourth and Main Streets is \$4,298.

Exhibit G-1

Charles O. Beckley, II
Beckley & Madden
January 27, 1999
Page 2

Accordingly, the net liquidation value of the track materials for the entire line between Fourth and South Streets is the total of all three figures or \$66,406. A breakdown of these figures is attached to this letter.

With respect to the right-of-way involved between Fourth and South Streets, this line extends approximately 3,898 feet. This larger segment contains ± 0.64 net fee acres and has a value estimated by CSX Real Property of \$11,700. The right-of-way between Main and South Streets extends approximately 2,591 feet and contains ± 0.20 net fee acres. This segment has a value estimated at \$3,650.

Combining the values for track materials with the values for the right-of-way shows a net liquidation value of \$78,106 between Fourth and South Streets (\$66,406 + \$11,700). The net liquidation value between Main and South Streets is \$54,572 (\$50,922 + \$3,650).

Hopefully, this information will allow your client to make an informed decision as to how to proceed in this matter. If you have any questions concerning the information I have furnished you, please do not hesitate to call me.

Very truly yours,



Charles M. Rosenberger
Senior Counsel

CMR/dam

Attachment

ESTIMATED NET TRACK SALVAGE VALUE

DESCRIPTION: CHAMBERSBURG, PA
 FOURTH ST. TO MAIN ST.
 MILEPOST: BAV 20.524 TO 20.772 FILE: PA-204
 VAL. STA. : 1083+67 TO 1096+74 = 1,307 T.F.(0.248 MI)
 VAL. SECT.: FORMER B & CV RR, VS 8-1 MAP 7
 INCLUDES: 0 TURNOUTS & 0 TF. SIDING (0.000 MI)

DETAIL OF ESTIMATE

QUANTITY	UNIT	QUANTITY NET TONS	DESCRIPTION OF ITEM	UNIT PRICE	TOTAL COST
0 EA		0.00	CROSS TIES - RELAY(TIMB 1984)	3.00	0
530 EA		0.00	CROSS TIES - LANDSCAPE	1.60	848
0 LF		0.00	140# JT RAIL - RELAY(CL#3)	210.00	0
			140/31 PS CC CARNEGIE 1954 JT(39)		
0 LF		0.00	132# JT RAIL - RELAY(CL#3)	210.00	0
0 LF		0.00	132# CW RAIL - RELAY(CL#1)	450.00	0
			132 RE CC BETH STEELTON 1969/72 CW		
			WEAR: T= 1/8(-), S= 0		
1,348 LF		28.17	132# CW RAIL - RELAY(CL#2)	410.00	11,551
			132 RE CC BETH STEELTON 1969/72		
			CW (EL) 39'		
			WEAR: T= 1/8(+) TO 3/16, S = 0		
0 LF		0.00	132# CW RAIL - RELAY(CL#3)	255.00	0
0 LF		0.00	132# CW RAIL - SCRAP	130.00	0
1,266 LF		26.26	131# CW RAIL - RELAY(CL#3)	255.00	6,695
			131 RE OH BSCO MARYLAND 1937 CW(EL)		
			WEAR: T=3/16, S=1/8 GFF, CL#3 = AGE		
0 LF		0.00	131# JT RAIL - RELAY(CL#3)	210.00	0
0 LF		0.00	90# JT RAIL - RELAY(CL#3)	130.00	0
			90A BSCO STEELTON 1919 OH 90LBS		
			ASCE, JT(33')		
0 PR		0.00	90# 29" 6-HOLE ANGLE BARS - SCRAP	4.35	0
			DRILL = 6-5-4		
1,488 EA		15.97	TIEPLATES, 7 3/4X14 DS 8-H RELAY	4.00	5,952
			MIXED WITH 7 3/4 X 13" & 14 1/2"		
0 EA		0.00	TIEPLATES, 7 3/4X13 DS 8-H RELAY	4.00	0
0 EA		0.00	TIEPLATES, 7 1/2 X 10 1/2" SS-SCRAP	0.65	0
1,340 EA		1.34	RAIL ANCHORS, 132# WOODINGS-RELAY	0.35	469
0 EA		0.00	RAIL ANCHORS, 132# UNIT - RELAY	0.35	0
0 PR		0.00	RAIL OFFSETS	75.00	0
0 EA		0.00	TRACK GAUGE RODS	0.60	0
1 LS		1.23	MISC. O.T.M.	120.00	148
		72.97			25,663

LESS COST TO REMOVE

1,307 TF		WELDED RAIL REMOVAL	2.10	2,745
0 TF		JOINTED RAIL REMOVAL	1.65	0
54 TF		RESTORE 1 PUBLIC PAVED RD X-INGS	48.00	2,592
	DOT	ROAD NAME	LENGTH	
	831-907H	US HWY #11, S. MAIN ST.	54	
	831-908P	SOUTH ST	0	
0 TF		RESTORE 0 PR & 0 PUB UNP. X-INGS	10.00	0
	DOT	ROAD NAME	LENGTH	
0 TF		REMOVE 0 TIMBER OPEN DECK BRIDGES	11.00	0
76 TF		REMOVE 1 STEEL OPEN DECK BRIDGE	115.00	8,740
		1-SPAN THRU. PLATE GIRDER		
0 EA		DISPOSE OF SCRAP TIES IN ADJ. TRKS.	2.00	0
		OR TIE BUTTS OR POLE LINE		
200 EA		DISPOSE OF SCRAP TIES	2.00	400

				14,477

ESTIMATED NET TRACK SALVAGE VALUE

11,186

ENGINEERING DEPARTMENT
JACKSONVILLE, FL
MAY 17, 1996
L05CHA3A.WKS
UPDATED JAN 19, 1999

BASED ON FIELD SURVEY

ESTIMATED NET TRACK SALVAGE VALUE

DESCRIPTION: CHAMBERSBURG, PA
 MAIN ST. TO SOUTH ST.
 MILEPOST: BAV 20.772 TO 21.263
 VAL. STA. : 1096+74 TO 1122+66 = 2,592 TF.
 VAL. SECT.: FORMER B & CV RR, VS 8-1, MAPS 7
 INCLUDES: 0 TURNOUTS & 0 TF. SIDING

FILE: PA-204
 (0.491 MI)
 (0.000 MI)

DETAIL OF ESTIMATE

QUANTITY	UNIT	QUANTITY NET TONS	DESCRIPTION OF ITEM	UNIT PRICE	TOTAL COST
0	EA	0.00	CROSS TIES - RELAY(TIMB 1984)	3.00	0
1,056	EA	0.00	CROSS TIES - LANDSCAPE	1.60	1,690
0	LF	0.00	140# JT RAIL - RELAY(CL#3)	210.00	0
			140/31 PS CC CARNEGIE 1954 JT(39)		
0	LF	0.00	132# JT RAIL - RELAY(CL#3)	210.00	0
0	LF	0.00	132# CW RAIL - RELAY(CL#1)	450.00	0
			132 RE CC BETH STEELTON 1969/72 CW		
			WEAR: T= 1/8(-), S= 0		
5,184	LF	108.35	132# CW RAIL - RELAY(CL#2)	410.00	44,422
			132 RE CC BETH STEELTON 1969/72		
			CW (EL) 39'		
			WEAR: T= 1/8(+) TO 3/16, S = 0		
0	LF	0.00	132# CW RAIL - RELAY(CL#3)	255.00	0
0	LF	0.00	132# CW RAIL - SCRAP	130.00	0
0	LF	0.00	131# CW RAIL - RELAY(CL#3)	255.00	0
			131 RE OH BSCO MARYLAND 1937 CW(EL)		
			WEAR: T=3/16, S=1/8 GFF, CL#3 = AGE		
0	LF	0.00	131# JT RAIL - RELAY(CL#3)	210.00	0
0	LF	0.00	90# JT RAIL - RELAY(CL#3)	130.00	0
			90A BSCO STEELTON 1919 OH 90LBS		
			ASCE, JT(33')		
0	PR	0.00	90# 29" 6-HOLE ANGLE BARS - SCRAP	4.35	0
			DRILL = 6-5-4		
2,890	EA	31.02	TIEPLATES, 7 3/4X14 DS 8-H RELAY	4.00	11,560
			MIXED WITH 7 3/4 X 13" & 14 1/2"		
0	EA	0.00	TIEPLATES, 7 3/4X13 DS 8-H RELAY	4.00	0
0	EA	0.00	TIEPLATES, 7 1/2 X 10 1/2" SS-SCRAP	0.65	0
2,600	EA	2.60	RAIL ANCHORS, 132# WOODINGS-RELAY	0.35	910
0	EA	0.00	RAIL ANCHORS, 132# UNIT - RELAY	0.35	0
0	PR	0.00	RAIL OFFSETS	75.00	0
0	EA	0.00	TRACK GAUGE RODS	0.60	0
1	LS	2.43	MISC. O.T.M.	120.00	292
		144.40			58,873

LESS COST TO REMOVE				

2,592	TF	WELDED RAIL REMOVAL	2.10	5,443
0	TF	JOINTED RAIL REMOVAL	1.65	0
36	TF	RESTORE 1 PUBLIC PAVED RD X-INGS	48.00	1,728
	DOT	ROAD NAME	LENGTH	
		831-907H US HWY #11, S. MAIN ST.	0	
		831-908P SOUTH ST	36	
0	TF	RESTORE 0 PR & 0 PUB UNP. X-INGS	10.00	0
	DOT	ROAD NAME	LENGTH	
0	TF	REMOVE 0 TIMBER OPEN DECK BRIDGES	11.00	0
0	TF	REMOVE 1 STEEL OPEN DECK BRIDGE	115.00	0
0	EA	DISPOSE OF SCRAP TIES IN ADJ. TRKS.	2.00	0
		OR TIE BUTTS OR POLE LINE		
390	EA	DISPOSE OF SCRAP TIES	2.00	780

				7,951

ESTIMATED NET TRACK SALVAGE VALUE	50,922
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ENGINEERING DEPARTMENT
JACKSONVILLE, FL
MAY 17, 1996
L05CHA3B.WKS
UPDATED JAN 19, 1999

BASED ON FIELD SURVEY

ESTIMATED NET TRACK SALVAGE VALUE

DESCRIPTION: AT CHAMBERSBURG, PA
 MILEPOST: BAV 20.684
 VAL. STA. : 0+67 TO 15+20 = 1,453 TF. FILE: PA-204
 15+20 TO 19+06 REMOVED (0.275 MI)
 VAL. SECT.: FORMER B & CV RR, VS 8-1 MAP 7
 P.S. 1092+11, JT. TRK. WITH CONRAIL
 INCLUDES: 6 TURNOUTS & 384 TF. SIDING (0.073 MI)

DETAIL OF ESTIMATE

QUANTITY	UNIT	QUANTITY NET TONS	DESCRIPTION OF ITEM	UNIT PRICE	TOTAL COST
682 EA		0.00	CROSS TIES - LANDSCAPE	1.60	1,091
3,674 LF		58.20	100# JT RAIL - RELAY(CL#3) 96A MARYLAND 1914/16, 100LBS, PS JT. RAIL (33')	130.00	7,566
2 EA		5.51	#8, 100PS RBM, 18' PTS - SCRAP	330.00	660
1 EA		1.60	#4, 100# BOLTED, 10' PTS - SCRAP	190.00	190
3 EA		6.20	#6, 100# RBM, 10' PTS. - SCRAP	245.00	735
111 PR		3.55	100# 24" 4-HOLE ANGLE BARS - SCRAP DRILL = 7- 5 1/2 - 7	3.80	422
1,948 EA		10.34	TIEPLATES, 7 X 10 1/2" SS - SCRAP	0.60	1,169
150 EA		0.15	RAIL ANCHORS, 100# - SCRAP	0.12	18
0 PR		0.00	RAIL OFFSETS 100/85	75.00	0
1 LS		1.59	MISC. O.T.M.	120.00	191
		87.14			12,041

LESS COST TO REMOVE

0	TF	WELDED RAIL REMOVAL	2.10	0
1,837	TF	JOINTED RAIL REMOVAL	1.65	3,031
86	TF	RESTORE 1 PUBLIC PAVED RD X-INGS	48.00	4,128
	DOT	ROAD NAME		
		LENGTH		
		WAYNE AVE		
0	TF	RESTORE 0 PR & 0 PUB UNP. X-INGS	10.00	0
	DOT	ROAD NAME		
		LENGTH		
0	TF	REMOVE 0 TIMBER OPEN DECK BRIDGES	11.00	0
0	TF	REMOVE 0 STEEL OPEN DECK BRIDGE	115.00	0
0	EA	DISPOSE OF SCRAP TIES IN ADJ. TRKS.	2.00	0
		OR TIE BUTTS OR POLE LINE		
292	EA	DISPOSE OF SCRAP TIES	2.00	584

				7,743

ESTIMATED NET TRACK SALVAGE VALUE

4,298

ENGINEERING DEPARTMENT
JACKSONVILLE, FL
MAY 15, 1996
L05CHAM1.WKS
REVIEWED JAN 19, 1999

BASED ON FIELD SURVEY

CERTIFICATE OF SERVICE

I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

SERVICE BY FED EX:

Natalie S. Rosenberg, Esquire
Senior Counsel
CSX Transportation, Inc.
Law Department
500 Water Street
Jacksonville, FL 32202

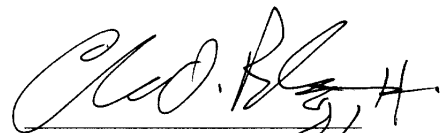
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DATED: March 3, 2004


Charles O. Beckley, II, Esquire